LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JUN 20 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 270

GREENWOOD AND MAJESTIC CONSTRUCTION CO.,
Petitioner

v.

DISTRICT OF COLUMBIA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

ABRAHAM J. HARRIS
ROBERT E. SHER
888 17th St., N. W.
Washington, D. C. 20006
Counsel for Petitioner

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

INDEX

	Page
Opinions below	2
Jurisdiction	2
Question presented	2
Statutory and contractual provisions involved	2
Statement	3
Reasons for granting the writ	7
Conclusion	14
Appendix	15

CITATIONS

CASES:

A. J. Paretta Contracting Co., Inc. v. United States, 109 Ct. Cl. 324, cert. den., 333 U.S. 832, 92 L.ed. 1116 10

Davy v. Crawford, 79 U.S. App. D.C. 375, 147 F. 2d 574 8

Ekco Products Company v. United States, 160 Ct. Cl. 75, 312 F. 2d 768 12

Greene v. United States, 376 U.S. 149, 11 L.ed. 2d 576 13

Hammaker v. Schleigh, 157 Md. 652, 147 A. 790 10

Hillsborough Township v. Cromwell, 326 U.S. 620, 90 L.ed. 358 13

Kayfield Construction Corp. v. United States, 278 F. 2d 217 (C.A. 2) 10

Kenny Construction Company v. District of Columbia, 105 U.S. App. D.C. 8, 262 F. 2d 926 ..... 10, 11

Kothe v. Taylor Trust, 280 U.S. 224, 74 L.ed. 382 8

Lundstrom v. United States, 53 F. Supp. 709 (D.C. Ore.), aff'd, 139 F. 2d 792 (C.A. 9) 10

Massman Const. Co. v. City Council of Greenville, Miss., 147 F. 2d 925 (C.A. 5) 8

Montana Nat. Bank v. Yellowstone County, 276 U.S. 499, 72 L.ed. 673 14

Page

National Coop Refinery Assn. v. Northern Ordnance, 238 F. 2d 803 (C.A. 10) 8
Norman J. Mulholland v. United States, Ct. Cl. No. 4-63, decided May 13, 1966 12
Pottsville Casting & Machine Shops v. United States, 121 Ct. Cl. 129, 101 F. Supp. 370 10
Priebe & Sons v. United States, 332 U.S. 407, 92 L.ed. 32 8
Railroad Waterproofing Corporation v. United States, 133 Ct. Cl. 911, 137 F. Supp. 713 12
United States v. Holpuch, 328 U.S. 234, 90 L.ed. 1192 ..... 11, 12, 13
United States v. J. C. Martin Lumber Company, 246 F. 2d 58 (C.A. 5) 8
United States v. LeRoy Dyal Co., 186 F. 2d 460 (C.A. 3) 10
United States v. Moorman, 338 U.S. 457 7
United States v. Utah Construction, No. 440, October Term, 1965, decided June 6, 1966 ..... 7, 8, 9, 11, 12, 13
Utah Construction and Mining Company v. United States, 168 Ct. Cl. 522, 339 F. 2d 606 ..... 9, 13
Waite v. Macy, 246 U.S. 606, 62 L.ed. 892 14

STATUTES:

28 U.S.C. 1254(1) 2

28 U.S.C. 1346(a)(2) 13

Act of May 11, 1954, c. 199 (Wunderlich Act), 68 Stat. 81, 41 U.S.C. 322 ..... 2, 7, 10, 12

D.C. Code, § 11-521 4

Reorganization Order No. 29, Board of Commissioners, District of Columbia, Part VII(b), 1 D.C. Code (1961 ed., Supp. V) Administration, Appendix, p. 16 ..... 2, 3, 11

MISCELLANEOUS:

3 Davis, Administrative Law, § 20.07 13

House Rept. No. 1380, 83rd Cong., 2d Sess., U.S. Code Cong. & Ad. News 1954, 83rd Cong., 2d Sess., pp. 2191, 2195 10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No.

GREENWOOD AND MAJESTIC CONSTRUCTION CO.,
Petitioner

v.

DISTRICT OF COLUMBIA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Greenwood and Majestic Construction Co. petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in this case on March 25, 1966.

OPINIONS BELOW

Neither the Court of Appeals nor the district court delivered an opinion in this case. A copy of the judgment entered by the Court of Appeals is printed as Appendix A hereto, *infra*, p. 15.

JURISDICTION

The judgment of the Court of Appeals was entered on March 25, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Where a standard form government contract limits contracting agency decision to questions arising thereunder and to those where the agency can make final and conclusive decisions, is the contractor required, as a precondition to judicial relief, to submit for agency decision a question as to the validity of the "liquidated damages" clause in the contract with respect to which the agency is not authorized by law to make a final and conclusive decision.

STATUTORY AND CONTRACTUAL PROVISIONS INVOLVED

1. Section 2 of the Act of May 11, 1954, c. 199 (Wunderlich Act), 68 Stat. 81, 41 U.S.C. 322, provides:

> "No Government contract shall contain a provision making final on a question of law the decision of any administrative official, representative, or board."

2. Reorganization Order No. 29 of the Board of Commissioners of the District of Columbia, Part VII(b), 1 D.C. Code (1961 ed., Supp. V) Administra-

tion, Appendix, p. 16, provides in pertinent part:

> "The decision of the Contract Appeals Board in every case shall be final * * *."

3. Article 15 of the contract between the parties provides in pertinent part:

> "Disputes.—Except as otherwise specifically provided in this contract, all disputes concerning questions arising under this contract shall be decided by the contracting officer subject to written appeal by the contractor within thirty (30) days to the Contract Appeals Board, whose decision shall be final and conclusive upon the parties thereto * * *." (JA 12)[1]

STATEMENT

The following facts are alleged in the complaint and admitted by respondent in its answer:

On July 12, 1961, petitioner and respondent entered into a contract for the construction by petitioner of a portion of the Potomac Interceptor Sewer (JA 2, 6). As planned and built by respondent, that sewer line extends more than 20 miles from Dulles International Airport and other points in Loudoun and Fairfax Counties, Virginia, across the Potomac River into Montgomery County, Maryland, and thence generally follows the course of the Potomac River to the western boundary of the District of Columbia, at which point it connects with respondent's main sanitary sewer system (JA 2, 6).

The purpose of the Potomac Interceptor Sewer is to intercept and conduct sewage from Dulles Interna-

[1] References herein to JA are to the joint appendix as printed for the use of the court below.